

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**SUSAN K. HARTMAN,**

Plaintiff,

v.

**MICHAEL J. ASTRUE,**

Commissioner of Social Security,

Defendant.

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No. 3:10-CV-06305-ST

**OPINION AND ORDER ADOPTING  
FINDINGS & RECOMMENDATION**

**SIMON, District Judge.**

On December 2, 2011, Magistrate Judge Janice Stewart issued Findings and Recommendation (#30) in the above-captioned case. Judge Stewart recommended that the Commissioner's decision be affirmed. The plaintiff filed objections on December 19, 2011, to which the defendant responded on December 23, 2011.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

The Commissioner determined that Susan Hartman was disabled as of June 1, 2007. Ms. Hartman has appealed the determination that she was not disabled between February 14, 2006, and May 31, 2007. In her objections to Judge Stewart's Findings and Recommendation, Ms. Hartman argues that:

[a] rational reading of the evidence logically shows Plaintiff was more disabled before the date she was found to be disabled, because she was more obese at that time, and because she had not yet had surgery. (Tr. 416.) Her knee did not improve after surgery; therefore she was found disabled. That her knee did not improve after surgery, by logical implication, means that her condition was equally bad before the surgery. The Magistrate erred by failing to address this argument.

The record suggests otherwise. The agency selected June 1, 2007, as an onset date for Ms. Hartman's disability because that was the month during which Ms. Hartman's doctors concluded that surgery was necessary. Ms. Hartman's first knee surgery was not until October 22, 2007. Thus the agency's initial disability determination already accounted for more than four months of disability preceding her surgery.

Ms. Hartman also asks this court to reconsider all of her arguments *de novo*. I have done so, and I agree with Judge Stewart's findings. Judge Stewart's Findings and Recommendations is therefore ADOPTED, and the decision of the Commissioner is AFFIRMED.

Dated this 5<sup>th</sup> day of March, 2012.



Michael H. Simon  
United States District Judge